BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF)	)	Application No. NUSF-7 Post-Hearing Brief of Arlington Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Hartington Telecommunications, Inc., Pierce Telephone Company, Inc., Stanton Telcom, Inc., Three River Telco, and the Blair Telephone Company (the "Companies")

On May 18, 1999, the Commission, on its own motion, issued an order initiating this docket to review the requests of several local exchange carriers for a waiver of the requirements of the order issued in Docket C-1628. This brief is submitted on behalf of Arlington Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Hartington Telecommunications, Inc., Pierce Telephone Company, Inc., Stanton Telcom, Inc., Three River Telco, and the Blair Telephone Company (the "Companies") in support of their respective waiver requests. This brief will address an issue common to each of the Companies relative to the calculation of earnings adjustments contemplated by the C-1628 Order.

I.

BACKGROUND

On December 9, 1999, the Commission held a legislative hearing to consider the waiver requests submitted by the Companies. At that hearing, the Commission Staff offered exhibits entitled "Company X Rate of Return From PSC Annual Report." These documents, marked as Exhibits 17, 19, 21, 22, 25, 26, 28, 33, 36, 45, 50 and 55 (collectively the "ROR Exhibits") display the rate of return for each of the Companies apparently based upon the formula used for the purposes of compiling the Commission's annual report to the Legislature.[1] The ROR Exhibits depict yearly and average rates of return from 1988 to 1998. For the reasons set forth below, the ROR Exhibits are not relevant to the Commission's determination in this case. The Companies, therefore, respectfully request that the Commission give no weight to the ROR Exhibits in this proceeding

II.

THE PURPOSE OF THE STAFF RATE OF RETURN EXHIBITS IS UNCLEAR.

A. The NUSF forms and supplemental information filed by the applicants is sufficient for the disposition of the cases.

Each of the Companies submitted a NUSF-EARN to the Commission supporting their respective waiver requests. (*See* Exhibits 16, 18, 20, 24, 27, 32, 35, 39, 44, 49, and 54) (collectively the Companies' NUSF-EARN forms). The NUSF-EARN form was created by the NUSF Administrator's office to be used when applying for funds from the NUSF. The form calculates earnings adjustments to the applicant's proposed NUSF

[1] Exhibit 22 purports to represent the combined rate of return for the HunTel companies. Exhibit 26 depicts the combined rate of return for Consolidated Telephone Co. and Consolidated Telco.

draw as set forth in the C-1628 Order. The data, calculations and methodology set forth on the form provide sufficient information to make earnings adjustments relative to a company's draw from the NUSF. All of the components of the Commission's prescribed earnings adjustment calculation are imbedded in the forms.

It is unclear why a separate exhibit purporting to represent the long-term rate of return is necessary for the determination of the issues before the Commission. While the purpose of the ROR Exhibits is uncertain, it is clear that these exhibits add little, if anything, to the Commission's consideration of the waiver requests.

B. The NUSF-EARN forms are consistent with the C-1628 Order and clearly prescribe a methodology for the assessment of an applicant's earning condition for the purpose of its NUSF draw.

The C-1628 Order prescribes the methodology for determining a company's eligibility for NUSF funding and, in doing so, sets forth the formula for calculating rate of return for the purposes of making earnings adjustments to a company's NUSF draw. The Order states:

> Each Eligible Carrier's (EC) total actual support is its total eligible support adjusted for rate of return and any failure to adequately rebalance local rates.

. . . .

> Total eligible support amounts will then be adjusted for rate of return. For this purpose, rate of return will be calculated as the sum of the EC's net operating income over the test period divided by the EC's net rate base over the same period. Net operating income will consist of total operating revenues less total operating expenses and operating taxes. The company which has elected to be taxed under Subchapter S of the Internal Revenue Code will have a corporate income tax imputed at statutory corporate rates and the Commission shall include imputed tax in the company's revenue requirement. Net rate base shall include

> gross plant in service, short-term construction, materials and supplies, accumulated depreciation and deferred income taxes. The financial information used for this calculation will be acquired from the annual report to the Commission pursuant to Neb. Rev. Stat. 86-807. An EC may elect to supplement this information to focus the rate of return review to a jurisdictional or supported services basis. The information used to focus the rate of return review shall be subject to Commission approval. Once an EC makes any of the above-described elections, such elections can only be changed with Commission approval.

In the Matter of the Application of the Nebraska Public Service Commission, on its own motion, seeking to conduct an investigation into intrastate access charge reform, Findings and Conclusions (January 13, 1999) (hereafter "C-1628 Order").

The NUSF-EARN forms clearly follow the methodology set forth in the C-1628 Order. The data, calculations and methodology follow the Order's language verbatim. Since the NUSF-EARN forms contain all data necessary to calculate a company's rate of return based on the C-1628 formula, any evidence relative to rate of return adjustments beyond the NUSF-EARN forms concerning the earnings adjustment factor is unnecessary with regard to the consideration of the Companies' waiver requests.

III.

THE STAFF APPROACH TO CALCULATING THE COMPANIES' RATE OF RETURN IS INCONSISTENT WITH THE METHODOLOGY PRESCRIBED IN THE C-1628 ORDER.

The Staff approach is inconsistent with the C-1628 Order in several material ways.

A. The C-1628 Order calculations are based on telephone operations.

As set forth above, the C-1628 Order contemplated that revenues used for the purpose of calculating rate of return would be based only on telephone operations. The NUSF-EARN form contains column B “Excluded Services” for the purpose of eliminating non-regulated revenues from the total revenue element of the calculation. The Staff’s approach apparently includes total revenues from Form M in calculating a rate of return for the Companies. Total revenues listed on Form M may (and do in many cases) include non-telephone operation revenues. As such, such calculations do not follow the methodology set forth in the C-1628 Order.

B. The C-1628 Order calculations provides for earnings review for a period of one or three years.

The C-1628 Order allows the earnings review, and therefore the over-earnings calculation, to be elected by the applicant for a period of one or three years prior to submission of the application. The ROR Exhibits depict a rate of return for a period of 10 years from 1988 to 1998, far beyond that authorized by the C-1628 Order. By going beyond the one or three year window, the ROR Exhibits introduce evidence that is not relevant to earnings adjustments to NUSF funding.

C. The C-1628 Order bases income tax treatment of Subchapter S corporations on tax imputation.

The C-1628 Order specifically recognizes that Subchapter S corporations may elect to impute taxes in calculating rate of return for the purposes of earnings adjustments in connection with applications for funding from the NUSF. However, the Staff’s methodology does not allow companies to use imputed taxes in performing the calculation. For Subchapter S corporations, not recognizing tax imputation skews the rate of return results significantly.

D. The rate base composition is well defined in the C-1628 Order.

The rate base to be used for the purposes of the earnings calculation was specifically defined in the C-1628 Order and imbedded in the NUSF-EARN form. *See, e.g.,* Exhibit 27, lines 1-6. It is unclear how the Staff defines "rate base" for the purposes of its rate of return calculation. However, insofar as the NUSF-EARN forms contain a definition of rate base consistent with the C-1628 Order, it is unnecessary to go beyond such exhibits in considering the waiver requests.

IV.

THE STAFF CALCULATION TENDS TO OVERSTATE THE RATE OF RETURN.

A. Because of the differences in the method articulated above, the Staff calculations overstate the rate of return.

The Commission's rate of return calculation apparently utilizes total company revenues reported on Form M for the purposes of its calculation. It appears that the Staff divided total company revenue, less expenses, by the company's rate base to arrive at a rate of return figure. The rate base factor apparently includes plant in service less depreciation and defined taxes. Therefore, the Staff's calculation appears to differ significantly from the C-1628 methodology in two important ways: (1) the Staff used total company revenues reported on Form M, including revenues fom regulated and non-regulated sources; and (2) the Staff subtracted actual taxes paid instead of imputed taxes from total revenues as an expense. These differences, among others, produce significant variations in the results when compared to the NUSF calculation set forth in the C-1628 Order.

B. Specific examples bear out the Companies' concerns.

With regard to a Subchapter S corporation, for example, the Staff's method of calculating rate of return will significantly overstate earnings for the purposes of NUSF calculations. The failure to impute taxes for such companies in the calculation produce significantly different results. Attached to this brief as Exhibit A is a hypothetical example of the effect of tax imputation on the rate of return calculation. As the Commission can see from the attached example, the failure to take imputed taxes into account causes the rate of return calculation to vary wildly for a Subchapter S corporation. Therefore, the Commission Staff's method, failing to recognize this important element of the C-1628 methodology should bear no weight with regard to the Commission's consideration of the waiver requests.

The methodology apparently utilized to create the ROR Exhibits delivers significantly different results than the calculation set forth in the C-1628 Order. From reviewing the data contained in the NUSF-EARN form submitted on behalf of the Companies, the rate of return calculation that should be used for the purposes of earnings adjustments differs significantly from the rates of return depicted on the ROR Exhibits. One could easily calculate rate of return from the data contained on the NUSF-EARN forms. As discussed below, the ROR Exhibits produce rates of return significantly higher than the Commission prescribed rate of return calculation for the purposes of NUSF funding. Therefore, these exhibits are not only irrelevant, but skew the earnings component of the Companies' waiver requests.

V.

CONCLUSION.

For the foregoing reasons, the Companies respectfully request that the Commission give no weight to the ROR Exhibits with regard to their respective waiver requests. The NUSF-EARN forms use the C-1628 authorized formula for calculating earnings. The methodology used to compile the ROR Exhibits differs significantly from the C-1628 formula. The Staff's calculation is not supported by statute or NPSC rule. The ROR Exhibits do not accurately reflect rates of return for NUSF purposes. Therefore, these exhibits are irrelevant to this proceeding and should be given no weight in considering the waiver requests.

Dated this ____ day of February, 2000.

ARLINGTON TELEPHONE COMPANY,
CAMBRIDGE TELEPHONE COMPANY,
CLARKS TELECOMMUNICATIONS CO.,
CONSOLIDATED TELEPHONE COMPANY,
EASTERN NEBRASKA TELEPHONE COMPANY,
HARTINGTON TELECOMMUNICATIONS, INC.,
PIERCE TELEPHONE COMPANY, INC.,
STANTON TELCOM, INC., THREE RIVER
TELCO, and the BLAIR TELEPHONE COMPANY,
Applicants

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF)	)))))	Application No. NUSF-7 Post-Hearing Brief of Cambridge Telephone Company

I. Summary of The Waiver Request

A. Cambridge Requests a Decrease in its Overearnings Adjustment for a "Known and Measurable" Adjustment

The C-1628 Order specifies that total eligible support amounts will be adjusted for rate-of-return.[1] For eligible carriers ("ECs") earning a rate of return greater than 12 percent over the test period, the actual support will be the total eligible support less the reduction in revenue required to lower the rate of return over the test period to 12 percent.[2]

On March 9, 1999, the Nebraska Public Service Commission ("Commission") issued an order directing incumbent local exchange carriers ("ILECs) to file transition plans. The instructions which were issued later allowed companies to identify other adjustments in Column (C) of the NUSF-EARN form.[3] This column allowed for companies "to make adjustments for significant known and measurable events that will

[1] *See the Application of the Nebraska Public Service Commission, on its Own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions, January13, 1999 ("C-1628 Order") at 8.

[2] Ibid.

[3] *See* Memorandum to All Incumbent Local Exchange Carrier in the State of Nebraska from Jeffrey L. Pursley, Director, Nebraska Universal Service Fund, RE: Company C-1628 Transition Plans, March 23, 1999.

occur over the support period and are not adequately reflected in the base period." Companies including amounts in this column were to file a waiver request stating why such adjustments should be allowed and supporting the calculated adjustments. Cambridge filed a waiver request to comply with this requirement on April 30, 1999.

B. Cambridge Requests This Waiver Due to a Change in Its Access Minute Measurement Due to IntraLATA Dialing Parity Implementation

Cambridge requests this waiver due to a "known and measurable" change in its test year data, which was caused by operational changes due to the implementation of intrastate dialing parity. Prior to its conversion to intraLATA dialing parity on October 13, 1998, Cambridge utilized a terminating-to-originating ratio to determine terminating intraLATA access minutes for billing purposes. However, with the conversion to intraLATA dialing parity, U S West indicated that it wished to be billed for actual terminating minutes and would no longer support payment of terminating access based on terminating-to-originating ratios.

Cambridge adjusted the amount of intraLATA terminating access minutes billed to U S West downward to reflect the difference between the amount of terminating minutes determined using the terminating-to-originating ratio and the amount of actual terminating minutes billed. The adjustment was about an eight percent reduction in access minutes, based on the difference between the terminating minutes that would have been billed under the two methods over the period of February 1999. This reduction in access minutes resulted in a $58,525 reduction in intrastate access revenues.

Cambridge is submitting the $58,525 reduction in Column (C) as an "Other -EARN form to offset the network access revenues it had previously reported and thus reduce its overearnings adjustment as shown in Column (D) of the NUSF-EARN form. This adjustment changes the test year data to reflect the method of billing terminating access and the amounts resulting from that method that were used in 1999 but were not yet in place during the test year period (1998). This adjustment is a "known and measurable" change that is supported by Commission rules regarding rate changes, as discussed following.

II. Cambridge's Waiver Request is Consistent with Commission Rules Regarding "Known and Measurable" Adjustments

A. Commission Rules Clarify Situations In Which "Known and Measurable" Adjustments are Appropriate

The Commission's rules for the use and construction of "known and measurable" adjustments are contained in Sections 002.29A1a through 002.29A1d of the Commission's Telecommunications Rules and Regulations. A brief restatement of the rules and the reasons why the adjustment complies with these rules follows.

Section 002.29A1a specifies that adjustments "must be based on data submitted for a recently concluded test year" and that the data must "be subject to correction or verification during the course of the proceeding." The adjustment meets both of these criteria in that the data was for a recently concluded test year (1998) and the data is being examined in a proceeding which is currently open.

Section 002.29A1b says that "adjustments will be made to test year data to reflect changes" which occur "but (are) not reflected in test year data, known and measurable changes in costs occurring within a reasonable time subsequent to the test year." The adjustment meets these requirements in that the use of actual terminating access minutes for billing purposes instead of minutes generated using a terminating-to-originating ratio is a change that is not reflected in test year data because the practice was instituted in the year following the test year (1999), which is within a reasonable time subsequent to the test year. The adjustment is "known and meas

ratio was developed to measure the change between the access minutes that were billed using the terminating-to-originating ratio and the actual terminating access minutes.

Section 002.29A1c states that "Adjustments will also be made to eliminate the effects of abnormal or unrepresentative conditions reflected in test year data." The adjustment is consistent with this criterion in that the billing of access minutes using a terminating-to-originating ratio (which was reflected in the test year data) was unrepresentative of the method that will be used on a going-forward basis, which is the use of actual terminating minutes.

Section 002.29A1d says that adjustment for changes "will not be made unless either the changes are subject to definite computation or reasonable estimation," or the adjustment "is dictated by overriding considerations of public policy and should be allowed despite difficulties in estimations." The adjustment meets the first part of the requirement in that it was based on a computation of the difference between access minutes billed using the terminating-to-originating ratio versus actual terminating access minutes over the period of February 1999. The adjustment further meets the requirement in that it was due to changes in business practices resulting from the implementation of a public policy (intraLATA dialing parity) .

B. The Record Indicates That the Request Qualifies as a "Known and

The hearing record indicates that Cambridge's waiver request meets the requirements for a "known and measurable" adjustment. In a summation of the situation, Mr. Jeff Pursley, Director of the Universal Service Fund, said "And, basically, the problem if I can restate it is that we determined the access reductions. We froze demand in terms of 1998 - - it was 1998 demand."[4] Mr. Pursley completes the summation by asking a question of Mr. Roger Hoffman, Executive Vice President of the Cambridge Telephone Company:[5]

> MR. PURSLEY: So, as a result, the 1998 demand is not reflective of the adjustments that are required by implementing that. Is that correct?
>
> MR. HOFFMAN: That is correct.

Thus, the record is clear that the test year demand is not reflective of changes in the measurement of terminating access minutes, and a "known and measurable" adjustment is necessary to reflect these changes.

[4] *See The Commission on Its Own Motion, Seeking to Review and Approve Requests for Modification of the Funding Calculation for the Nebraska Universal Service Fund* ("NUSF"), Application No. NUSF-7, Hearing Transcript, filed January 13, 2000 ("NUSF-7 Transcript") at 105:14-17.

[5] *See NUSF-7 Transcript* at 105:21-24.

III. The Impact of Granting Cambridge's Waiver Request is Minimal and the Request is Reasonable

The impact of granting the waiver request is minimal. Granting the application would result in an increase in the funding requirement of $58,525, by reducing Cambridge's overearning adjustment by a like amount. There would be no impact on collections for the fund.

The request is reasonable, in that it accounts for changes that have occurred since the test period which are now "known and measurable." This is a one-time adjustment for the 1999 fund year.

IV. Conclusion

Cambridge is requesting that it be allowed to make a "known and measurable" adjustment to its overearnings adjustment, to reflect a change in the billing of terminating access minutes requested by U S West as a result of intraLATA dialing parity implementation. Cambridge is now billing terminating access minutes to U S West on an actual basis, Cambridge had previously billed terminating access minutes based on a terminating-to-originating ratio. This change resulted in about an eight percent decrease in total access minutes billed, or a $58,525 decrease in revenues.

Granting Cambridge's request would increase the funding requirement by $58,525. This would be a one-time adjustment for the 1999 fund year. There would be no impact on fund collections as a result of this request. Cambridge believes that the Commission should find this request fair and reasonable.

Dated this ____ day of February, 2000.

CAMBRIDGE TELEPHONE COMPANY,
Applicant

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its	)	Application No. NUSF-7
own motion, seeking to review and	)	
approve requests for modification	)	Post-Hearing Brief of
of the funding calculation of the Nebraska	)	Clarks Telecommunications Co.
Universal Service Fund (NUSF)		

On January 13, 1999, the Nebraska Public Service Commission ("Commission") issued an order in Docket No. C-1628 requiring all Nebraska local exchange carriers ("LECs") to implement transition plans by which they would reduce access rate levels, increase local service rates to statewide targets and establish appropriate withdrawals, if any, from the newly established Nebraska Universal Service Fund ("NUSF"). Clarks) filed its transition plan on April 30, 1999, which was approved in part by the Commission on August 3, 1999.

Concurrent with its plan, Clarks submitted a request for waiver of possible requirements in the C-1628 order. Specifically, Clarks requested additional funding from the NUSF for the first year of its transition plan to the extent that the company was earning under the C-1628 rate of return ("ROR") target of 12 percent. On December 9, 1999, the Commission conducted a hearing on the waivers filed by Clarks and other LECs. Post-hearing briefs were to be filed by February 4, 2000. Clarks herein submits its brief in support of the initial waiver application and the positions the company presented at the hearing.

I. Summary of Clarks' Waiver Request

Clarks' waiver request would provide the company with additional NUSF support in order to bring its ROR to the 12 percent level established by the Commission in the January 13, 1999, C-1628 final order. In its request, Clarks sought $222,693 in additional support for Year 1 of its transition plan, including $33,398 representing its local rate increase and $189,295 in additional NUSF. (Bittinger Tr. at 109) Clarks' transition plan also reduced its access rates by 4½ cents per minute, or a reduction of $238,479 in access revenues in the first year. It also increased monthly local service rates by the 30 percent statutory maximum to $16.05 for residence customers and $22.80 for business customers. Clarks' local service rates would reach the $17.50 residence and $27.50 business targets on September 1, 2000, the second year of the plan. (Bittinger Tr. at 108) Thus, the company has aggressively implemented required C-1628 access reduction and local rate rebalancing conditions.

While the results of the C-1628 order had a revenue neutral effect on Clarks, the rate requirements in the order do not allow the company to resolve its earnings shortfall. According to the NUSF-EARN forms submitted by Clarks accompanying its transition plan, without the waiver request the company would experience a negative ROR based on a one-year intrastate calculation as allowed by the order. As was explored at the hearing, Clarks' low ROR is in large part due to the significant investment in central office equipment that was required to implement four-digit carrier identification code requirements and intralata dialing parity. (Bittinger Tr. At 108) Because of the impact of this necessary $500,000 expenditure on a company such as Clarks with a small customer base, Clarks is placed in the unavoidable position of not being able to earn a reasonable ROR. This puts the company at a severe disadvantage compared to over-earning companies that have been allowed a ROR of 12 percent when making their NUSF adjustments.

If granted, Clarks' waiver would have only a minimal impact on the NUSF. However, it would not result in any additional collections as the existing fund is adequately sized to accommodate the request, which is solely for the 1999 fund year.

II. Principles Contained in the Commission's C-1628 Order Justify the Granting of Clarks' Waiver Request

Clarks' waiver request is not only necessary to ensure the company has the opportunity to earn a reasonable ROR while implementing C-1628 mandates, it is justified by the very principles that are either stated or implied in the Commission's order. First, it is clear that the order intends to enforce requirements on all carriers in a fair and competitively neutral manner, consistent with the Telecommunications Act of 1996 and the Nebraska Universal Service Fund Act. Thus, the Commission should not implement requirements that result in an advantage for one category of companies over another. Were the Commission not to grant Clarks' waiver, the order would create the seemingly unintended result of allowing over-earning companies a 12 percent ROR following their implementation of C-1628 requirements, while under-earning companies such as Clarks would have no recourse but to sustain the order's impact on their earnings. Such an inequitable result sends an inconsistent message to under-earning companies and clearly results in an unfair advantage for any company that earned at or above 12 percent for the test year or years of its plan.

In addition, the C-1628 order is ambiguous in expressing a policy on ROR for under-earning LECs. The order states that total eligible support will be adjusted for ROR, which will be calculated as the sum of the carrier's net operating income over the test period divided by the net rate base over the same period. (*See* C-1628 Findings and Conclusions at 8) The only explicit adjustments detailed in the order, however, address adjustments to be made by companies that are earning greater than 12 percent for the given test period. (Ibid.) There has been no explicit indication from the Commission as to its position regarding under-earning companies, thus leaving the waiver as these companies' only option. That being the case, it is essential that the Commission deal with the waiver requests promptly to give clear direction to the affected companies and to address this omission in the order.

Finally, the Commission's methodology for determining permanent NUSF support for non-rural LECs would seem to be an indication that the Commission intends for all companies to be assured a 12 percent ROR level as a condition of determining NUSF draws. While the order only deals with rural companies such as Clarks on an interim basis, it does establish a procedure for determining permanent NUSF support for non-rural carriers. That support will be determined by establishing non-rural companies' forward-looking direct costs for supported services, including joint and common costs and a reasonable profit, under the Benchmark Cost Proxy Model version 3.1. The order also requires there be a ROR adjustment following the first year of implementation of the permanent NUSF plan by any over-earning non-rural companies. (Ibid. at 7-8)

From the plain language of this methodology, the Commission supports non-rural companies in effect receiving a return on rate base — or cost — as a condition of those companies' permanent NUSF determination. While the methodology for determining non-rural companies' costs is not applicable to rural LECs, the inclusion of an allowed ROR in the non-rural LEC methodology does serve as a precedent. It would be highly inconsistent for the Commission to adopt this standard for permanent NUSF support for all non-rural companies, yet deny under-earning companies the same opportunity to earn at the same target under these interim transition plans.

For all of the above reasons, it is conclusive that the principles contained in the C-1628 support the granting of Clarks' waiver.

III. Clarks' Request is Consistent With the Forecasts and Rationale Presented by the NUSF Director

A significant factor that also supports the granting of Clarks' request is that the effect of such requests on the NUSF, if granted, appears to have been accounted for in NUSF forecasts. (Bittinger Tr. at 109) This fact was recognized by NUSF Director Jeffrey L. Pursley in Docket No. NUSF-4 testimony filed May 19, 1999, which discussed the various items that had been factored into NUSF funding requirements. Among those were requests from companies for additional payments because of under-earnings and requests from companies to keep local rate increases. (Pursley NUSF-4 testimony at Question 15)

Mr. Pursley's testimony notes that the C-1628 caps placed on local service and access must be recognized by the Commission in its consideration of waiver requests from under-earning companies. (Ibid.) This statement can certainly be construed to be a recommendation to the Commission to view favorably requests from under-earning companies, since those companies' local service and access rates are under C-1628 constraints.

Lending further support to those views, Mr. Pursley's comments during the hearing also reiterated his NUSF-4 testimony positions. He said of under-earning companies: "We are not guaranteeing a rate of return the way it (the NUSF) is structured. However, we are making it extremely likely that they will earn a 12 percent return." (Pursley Tr. at 53)

At a minimum, based on Mr. Pursley's testimony, the Commission has clear direction that supports the granting of the local rate increase component of Clarks' request. Specifically, the NUSF director refers to under-earning companies such as Clarks that have requested their C-1628 local rate increases not be netted against their respective access reductions. (Ibid.) Mr. Pursley observed that granting these requests would be preferable to having companies increase local service rates beyond the structure contemplated in the C-1628 order, and forecasted that the requests will have minimal effect on the fund. He said: "... I believe we should grant these requests through the transition plan process to prevent any customer confusion that we can." (Ibid.)

Supported by this direction, the Commission should grant Clarks' entire under-earnings request.

IV. Fluctuations in Small LECs' ROR are Unavoidable and Should be Taken into Account When Dealing with Under-earning Companies

As noted earlier, Clarks' ROR was negative based on the one-year calculation accompanying its transition plan. At the hearing, the Commission requested from the company a three-year ROR calculation, which also produced a result far below the 12 percent threshold. (*See* late-filed Exhibit 34) Thus, in either view permitted by the C-1628 order, Clarks is in a substantial under-earning position that disadvantages it compared to over-earning companies which are guaranteed a 12 percent ROR.

It is undeniable that small companies such as Clarks have less ability to control fluctuations in their ROR. That vulnerability to ROR swings has become even more tenuous with the access reductions that are required by the C-1628 order. Thus, Clarks' ability to respond to ROR fluctuations are limited because of the caps on local service and access rates, as was referenced by the NUSF director.

While substantial local rate increases have been implemented by Clarks, there is no way that earnings shortfalls can be avoided solely with local rate increases. (Bittinger Tr. at 112-113) Because of its small subscriber base, Clarks would point out that in order to satisfactorily address its under-earnings picture with local rate increases, it would have to raise local rates in excess of $18 per month per line. Increases of that magnitude, of course, are out of the question. The inescapable conclusion is that if equity is to be accomplished between under-earning and over-earning LECs under the C-1628 regime, the only reasonable method to accomplish that equity for small companies will be to permit the under-earning companies to draw additional support from the NUSF.

Also as noted at the hearing, because of the large expenditures in infrastructure that Clarks was required to make, an impact on the company's ROR is unavoidable. First, depreciation expenses increased because of the additions to Clarks' plant, which directly resulted in a decrease in earnings. (Aanerud Tr. at 113) In addition, replacements in plant such as that which occurred at Clarks increased the rate base for calculating ROR changes. Thus, when plant is newer, it results in a lower ROR. Even though the C-1628 order permitted companies the option of a three-year ROR averaging, "spikes" in small-company ROR levels tend to be longer than three years in order to compensate for the length of equipment replacement. (Ibid.) It was precisely for this reason -- avoiding these longer-term ROR spikes -- that Clarks selected the one-year option in filing its plan.

V. The Commission's Handling of Under-earning Waivers Will Directly Affect Companies' Decisions on Investing in Plant to Meet Customers' Needs

Clarks' request before this Commission is based upon a premise that small companies with slow-growing or even shrinking customer bases must be able to maintain a reasonable opportunity to recover the costs of their investments of serving these high-cost customers. Otherwise, the companies will have little choice but to curtail their investment levels, as would any prudent business whose revenue opportunities are limited.

That outcome, of course, would not be in the best interest of rural customers. But it is exactly the chilling message that will sent to these customers should under-earning companies be unable to earn a reasonable return under the C-1628 rules.

Taken to its potential conclusion, the limits the Commission has imposed in establishing the NUSF could in fact jeopardize the current universal service in rural Nebraska that the fund has been established to protect.

For additional guidance on dealing with waivers from under-earning companies, the Commission's should consider the current interstate National Exchange Carrier Association ("NECA") requirements. Under NECA rules, rural companies such as Clarks which annually establish their interstate access rates based on the companies' costs are guaranteed a ROR when setting those rates — currently 11.25 percent.

With the conditions required under the C-1628 rules, by which Clarks cannot raise access rates nor adequately increase local rates because its small customer base, the only reasonable option to enable the company to remedy its under-earnings situation it to permit an additional withdrawal from the NUSF.

VI. Conclusion

Clarks respectfully requests that the Commission grant its waiver request for the 1999 test year for the above-stated reasons. Granting the request would ensure equitable treatment among companies regardless of their earnings level. The request is consistent with the principles upon which the C-1628 order is based. The request has also been recognized as appropriate by the NUSF director and factored into the fund forecast. Thus, it would not cause any additional impact on funding requirements.

Dated this ____ day of February, 2000.

CLARKS TELECOMMUNICATIONS CO.,
Applicant

By: ______________________________

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DOCS/399819.1

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on Its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF)	)))))	Application No. NUSF-7 Post-Hearing Brief of Hartington Telecommunications Company

I. Summary of The Waiver Request

A. Hartington Requests a Waiver of the Provision Requiring The Reduction of Support Provided by Local Rate Increases by Subtracting Revenue Lost Through Access Rate Reductions

The C-1628 order required that, during the transition period, an eligible carrier's ("ECs") support "shall equal the implicit support it has removed through changes in access charges and basic local service rate reductions, less the implicit support obviated through basic local service rate increases."[1] This provision basically means that an EC must compute its support by netting the increase in its local service revenues provided by local rate increases against decreases in its access revenues which occur as a result of moving intrastate access rates to target levels specified in the C-1628 order.

Hartington requests that this provision requiring the netting of support provided by local rate increases against access rate decreases be waived, and that it be allowed

[1] *See Application of the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions, January 13, 1999, ("C-1628 Order") at 9.

to receive support equal to the amount of its access rate decreases. Hartington filed a waiver request to comply with this requirement on April 30, 1999.

B. Hartington Requests This Waiver Due to Significant Underearnings

Hartington is experiencing significant underearnings. As illustrated on Hartington's NUSF-EARN form, Column (D) Hartington is earning $121,767 less than the amount necessary to generate a 12 percent rate of return. Allowing Hartington to receive support equal to its reduction in access revenues would grant it $55,012 in additional support. This additional support amounts to less than half of the total dollar amount of underearnings.

Hartington is experiencing underearnings despite the fact that it is moving local rates to target levels within the transition period. Hartington will reach target rate levels on September 1, 2000.

Hartington understands that its request to keep its local rate increase revenue and not net it against access reductions will not raise its rate of return to the 12 percent allowed before adjustments are made in support payments. This waiver request is a one-time adjustment for the
1999 fund year.

C. Hartington Also Requests that a "Known and Measurable" Adjustment be Made to its Earnings

On March 9, 1999, the Nebraska Public Service Commission ("Commission") issued an order directing incumbent local exchange carriers ("ILECs) to file transition plans. The instructions which were issued later allowed companies to identify other adjustments in Column (C) of the NUSF-EARN form.[2] This column allowed for companies, "to make adjustments for significant known and measurable events that will occur over the support period and are not adequately reflected in the base period." Companies including amounts in this column were to file a waiver request stating why such adjustments should be allowed and supporting the calculated adjustments.

In order to offer intraLATA dialing parity, Hartington purchased generic hardware and generic software upgrades to its switch. This purchase was necessary to allow the switch to store enough information on presubscribed interexchange carriers ("PICs") for all its customers. The annual costs Hartington incurred for these upgrades is $28,500. An adjustment of this amount would increase the underearnings represented on the NUSF-EARN form, but would have no impact on the support requested.

II. Hartington's Waiver Request is Consistent with Principles Contained in the C-1628 Order and Nebraska Statutes

A. Without Granting Waivers, the C-1628 Order Would Not be Competitively Neutral

The Nebraska Telecommunications Universal Service Fund Act stated that there should be "specific, predictable, and *competitively neutral* mechanisms to preserve and advance universal service" in the state.[3] In order to fulfill this principle, the implementation requirements of the C-1628 Order should not allow companies in a particular situation to gain an advantage over companies that are faced with a different

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[2] *See* Memorandum to All Incumbent Local Exchange Carrier in the State of Nebraska from Jeffrey L. Pursley, Director, Nebraska Universal Service Fund, RE: Company C-1628 Transition Plans, March 23, 1999.

[3] *See* Neb. Rev. Stat. §86-1404(5), emphasis added.

situation as a result of complying with the C-1628 Order. This would be the case if the order were construed to not allow companies to apply for waivers to help offset earning less than a 12 percent rate of return, while companies earning greater than a 12 percent rate of return have their eligible support amounts adjusted so that they earn exactly a 12 percent rate of return.

B. The C-1628 Order Does Not Address The Specific Treatment of Underearnings

The C-1628 Order does not address the question of whether any adjustments will be made to support for ECs earning less than a 12 percent rate of return. The order only states that total eligible support will be adjusted for rate of return, which will be calculated as the sum of the carrier's net operating income over the test period divided by the net rate base over the same period.[4] The order does, however, specify the method in which adjustments will be made to eligible support for ECs earning greater than a 12 percent rate of return.[5] There has been no explicit indication from the Commission as to its policy regarding underearning companies, thus leaving filing a waiver as these companies' only option.

While the order is ambiguous on the treatment of underearnings situations, testimony of Mr. Jeff Pursley, Director of the Universal Service Fund, indicates that the intent with regard to implementation is to make it "extremely likely that they will earn a

[4] *See C-1628 Order* at 8.

[5] *See C-1628 Order* at 6.

12% rate of return."[6] Thus, while the order does not address the whether additional support will be granted to companies earning less than a 12 percent rate of return, it is clear that the Director of the Universal Service intended to "make it likely" for companies to earn a 12 percent rate of return if they applied for a waiver, at least for a subset of supported services.

C. The Permanent Methodology Adopted for Non-Rural Carriers Guarantees a Return on a Calculated Rate Base

The C-1628 Order prescribes a permanent methodology (after the transition period) to be followed in determining NUSF support for non-rural carriers. This methodology will determine the costs for supported services by determining the forward looking direct cost of a service, and a reasonable share of the joint and common costs, including a reasonable profit. In the C-1633 Order, the Commission recommended that the FCC adopt the Benchmark Cost Proxy Model ("BCPM") uncapped version 3.1 to determine federal universal service support for non-rural carrier in Nebraska. The Commission also stated it found this model to be the most appropriate for determining Nebraska non-rural carrier forward looking costs, and adopted it for this purpose in the C-1628 Order.[7]

The BCPM, as well as other proxy models, develops a hypothetical network to serve customers in a given area, and determines the investment and resulting cost to

[6] *See The Commission on Its Own Motion, Seeking to Review and Approve Requests for Modification of the Funding Calculation for the Nebraska Universal Service Fund* ("NUSF"), Application No. NUSF-7, Hearing Transcript, filed January 13, 2000 ("NUSF-7 Transcript") at 53:4-5.

[7] *See C-1628 Order* at 7.

serve that area. In order to develop the cost, the model includes a cost of capital, or rate of return on investment. Thus, by compensating a carrier based on costs developed using a proxy model, the carrier is guaranteed a rate of return on the amount of investment calculated by the model.

While the permanent methodology adopted for non-rural carrier is not applicable to rural LECs, the inclusion of a specified rate of return in the non-rural carrier's support methodology serves as a precedent. The permanent methodology for non-rural carriers also specifies that after the first year under the permanent mechanism, rate of return adjustments will be made.[8] Thus, the effect of this methodology is to guarantee a non-rural carrier a rate of return, and to reduce its support only if it does not make the necessary investments calculated by the model. It would be inconsistent for the Commission to compensate non-rural companies for USF support with a specified rate of return, while denying rural carriers the same opportunity while under their interim transition plans. Such would be the case, unless the Commission allows the granting of waivers to underearning rural companies such as Hartington.

III. Hartington's Request is Consistent With the Philosophy of Fund Administration Articulated by the NUSF Director

A. Requests Such as Hartington's Were Anticipated and Planned for in Sizing the NUSF Fund

Testimony presented by Mr. Jeff Pursley, Director of the NUSF, indicates that requests to keep all revenue from local rate increases were one of the considerations

[8] *See C-1628 Order* at 8.

that were used in estimating the NUSF funding requirement.[9] Since these requests were anticipated in sizing the fund, they should not have any impact on collections necessary for the fund.

B. The NUSF Director Support the Granting of Waivers to Keep Local Rate Increase Revenues to Help Reduce Customer Confusion

Mr. Pursley, in his May 19, 1999 testimony regarding company requests to not have local rate increases netted against access reductions, said, "Given that companies can file rate increases outside of the transition plan, I believe we should grant these requests and attempt to deal with all local rate increases through the transition plan process to prevent any customer confusion we can."[10] Mr. Pursley further noted that he would take into account the additional revenue when performing each company's over-earnings analysis, thus, he felt "there will be little negative impact to end users" from granting such requests.[11] It is clear from these statements that the NUSF director prefers to keep company requests to supplement underearnings as part of the NUSF waiver process, instead of using other avenues outside of the NUSF process such as local rate increases independent of those contained in company transition plans.

IV. Hartington's Waiver Request is Consistent with Commission Rules Regarding "Known and Measurable" Adjustments

A. Commission Rules Clarify Situations In Which "Known and Measurable" Adjustments are Appropriate

[9] *See Testimony of Jeffrey L Pursley of the Nebraska Public Service Commission*, May 19, 1999, at Q. 15.

[10] Ibid.

[11] Ibid.

The Commission's rules for the use and construction of "known and measurable" adjustments are contained in Sections 002.29A1a through 002.29A1d of the Commission's Telecommunications Rules and Regulations. A brief restatement of the rules and the reasons why the adjustment complies with these rules follows.

Section 002.29A1a specifies that adjustments "must be based on data submitted for a recently concluded test year" and that the data must "be subject to correction or verification during the course of the proceeding." The adjustment meets both of these criteria in that the data was for a recently concluded test year (1998) and the data is being examined in a proceeding which is currently open.

Section 002.29A1b says that "adjustments will be made to test year data to reflect changes" which occur "but (are) not reflected in test year data, known and measurable changes in costs occurring within a reasonable time subsequent to the test year." The adjustment meets these requirements in that the purchase of generic software to accommodate intraLATA dialing parity is a change that is not reflected in test year data because the purchase was made in the year following the test year (1999), which is within a reasonable time subsequent to the test year. The adjustment is "known and measurable" in that the annual expenditure for the software is known.

Section 002.29A1c states that "Adjustments will also be made to eliminate the effects of abnormal or unrepresentative conditions reflected in test year data." The adjustment is consistent with this criterion in that intraLATA dialing parity was not offered during the test year and thus the expenditure had not yet been made.

Section 002.29A1d says that adjustment for changes "will not be made unless either the changes are subject to definite computation or reasonable estimation," or the adjustment "is dictated by overriding considerations of public policy and should be allowed despite difficulties in estimations." The adjustment meets the first part of the requirement in that the annual expenditure for the software is known and thus subject to "definite computation". The adjustment further meets the requirement in that it was due to changes in business practices resulting from the implementation of a public policy (intraLATA dialing parity) .

B. The Record Indicates That the Request Qualifies as a "Known and

The hearing record indicates that Hartington's waiver request meets the requirements for a "known and measurable" adjustment. The switch purchase, and associated software purchase and license for which the waiver is requested, was required to meet a public policy objective (intraLATA dialing parity) as indicated by the exchange which took place between Commissioner Frank Landis, and Bill Dendinger, General Manager of Hartington Telecommunications Company, regarding the switch purchase:[12]

MR. DENDINGER: We were looking for - - we were not equal access at that point into meeting the equal access requirements. So, we had to - - it is a time issue again when we had to do it compared to when the USF went into effect.

COMR. LANDIS: Yes, and we had already entered that order about dialing parity and setting up time lines and - - so, that was really - - you didn't have an option.

[12] *See NUSF-7 Transcript* at 119:11-24.

MR. DENDINGER: No.

COMR. LANDIS: You needed to put the switch in.

MR. DENDINGER: Yes.

COMR. LANDIS: The year you put it in is the year we are measuring.

MR. DENDINGER: Yes.

It is clear from the record that the switch purchase and associated software purchase was necessary to meet a public policy objective (dialing parity), and that the purchase was made in the year immediately following the test year, and would affect earnings as measured by the test year.

V. Conclusion

Hartington is requesting that it be allowed to keep its local rate increase revenue, and not net it against decreases in access revenue that occurred as a result of access rate reductions. Hartington is making this request because it is significantly underearning. Allowing Hartington to keep all revenues from its local rate increases would amount to less than half of the total dollar amount of its underearnings. Hartington understands that even with the granting of this waiver request it will be earning less than a 12 percent rate of return.

Hartington believes its request is consistent with principles contained in the C-1628 Order and Nebraska statutes. Hartington's request also fits with the NUSF Director's philosophy for administering local rate increase requests, which is to allow for waivers to keep local rate increase revenues instead of necessitating local rate increases in addition to those contained in the transition plans.

Granting Hartington's request would increase the funding requirement by $55,012. This would be a one-time adjustment for the 1999 fund year. There would be no impact on fund collections as a result of this request. Hartington believes that the Commission should find this request fair and reasonable.

Dated this ____ day of February, 2000.

HARTINGTON TELECOMMUNICATIONS
COMPANY, Applicant

By: ________________________________
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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on	)	Application No. NUSF-7
its own motion, seeking to review and	)	
approve requests for modification of the	)	Post-Hearing Brief of
funding calculation for the Nebraska	)	Hershey Cooperative Telephone
Universal Service Fund (NUSF)	)	Company

I. Summary Of The Waiver Request

A. Waiver of the Provision Disallowing Rural Companies to Increase their Revenue Through Use of the Prescribed Access Rate is Requested

The C-1628 order allowed rural companies to adopt interstate July 1, 1998, traffic sensitive access rate levels with an adjustment for interstate settlements by a factor of 1.25 where appropriate. The factor was adopted to reflect rates that would more closely approximate state access costs for rural Nebraska local exchange carriers ("LECs") participating in the National Exchange Carrier Association ("NECA") pool. The use of the factor was to be reviewed upon the submission of each company's plan and approved on an individual company basis. The order stated ". . . however, under no circumstance will this factor be approved where the result would cause an increase in a company's access revenue."[1]

[1] *See Application of the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions, January 13, 1999, ("C-1628 Order") at 11.

B. Hershey Requests This Waiver Due to Significant Underearnings

Hershey is significantly underearning. As illustrated on Hershey's NUSF-EARN form, Column (D), Hershey is earning $145,215 less than the amount necessary to generate a 12 percent rate of return. The use of state access rates set at target levels would allow Hershey to generate $3,062 in additional access revenues which would help offset the underearnings. This additional access revenue amounts to just 2.1 percent of the total dollar amount of underearnings.

Hershey is experiencing underearnings despite the fact it is moving local rates to target levels within the transition period. As shown in its transition plan (NUSF-TRAN) Hershey's local residential rates will reach the C-1628 target level on September 1, 2000. Business rates will reach the target level on September 1,2002.

Hershey is not receiving any support from the Nebraska Universal Service Fund, as it did not experience access revenue reductions in excess of its local rate increases. Hershey is not seeking any support from the Fund through this waiver request, it is merely requesting that it be allowed to leave its intrastate access rates at target levels, and keep the minimal amount of additional revenue generated by these access rates.

II. Hershey's Waiver Request is Consistent with Policy Established in C-1628 Order

A. The C-1628 Order Finds that Prices for Access Services Should be Reduced

The C-1628 order notes that in the past, universal service has been funded through a policy of pricing certain ILEC services, such as access, at levels to support other services, primarily residential service.[2] Due to the opening of ILEC markets to competition, the order finds that this practice is no longer desirable, and that rates for services such as access which provide support should be reduced.[3]

B. Hershey's Access Rates Were Low Prior to the C-1628 Order

Hershey's access rates have been among the lowest for rural companies in Nebraska. Hershey's access rates were already slightly below the target rate set for rural LECs in the C-1628 order. Thus, Hershey had already met the Nebraska Public Service Commission's stated goal of reducing support for local service from access rates. Leaving Hershey's access rates at the target level results in a less than one-tenth of one cent increase from Hershey's already low access rates. Moving Hershey's intrastate access rates to the target rates only increases its intrastate access revenues by about 1.4 percent. The change in the rate and the resulting revenue increase is an amount that should be considered de minimus.

C. Hershey's Access Rates Conform to the Caps Set in the C-1628 Order

Absent the requirement that access prices do not increase, Hershey's access rates as set in its transition plan are at the target level set in the C-1628 order. This fact was established in an exchange between Mr. Jeff Pursley,

[2] *See C-1628 Order* at 2.

[3] *See C-1628 Order* at 3.

Director of the Universal Service Fund, and Ms. Dianne Knaub, General Manager of the Hershey Cooperative Telephone Company:[4]

> MR. PURSLEY: You are basically asking to allow it to charge slightly higher access rates but access rates that do conform to the caps absent the requirement that access prices do not increase.
>
> MS. KNAUB: Correct.

In further discussion of Hershey's access rates relative to the target level, Mr. Pursley also stated, "But they are [5] Thus, the record is clear that absent the requirement that the access rates do not increase, Hershey's intrastate access rates are set at the target level, not above it.

III. Conclusion

The change in Hershey's access rates to match target levels set in the C-1628 Order and the resulting additional revenue collected is de minimus. Hershey's access rates were increased a mere one-tenth of one cent, and the additional revenue collected from this change was only a 1.4 percent increase over the previous intrastate access revenue total.

Hershey is requesting that it be allowed to keep its access rates at the target level, and use the additional revenues collected from this change to offset its significant underearnings. The additional revenue collected from the change in access rates amounts to only 2.1 percent of the total underearnings.

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[4] *See The Commission on Its Own Motion, Seeking to Review and Approve Requests for Modification of the Funding Calculation for the Nebraska Universal Service Fund* ("NUSF"), Application No. NUSF-7, Hearing Transcript, filed January 13, 2000 ("NUSF-7 Transcript") at 123:20-24.

[5] *See NUSF-7 Transcript* at 124:15-26.

Most importantly, Hershey is currently not receiving any support from the NUSF, and is not requesting any support from the fund through this waiver request. There will be no impact on the fund as a result of this request, and the impact on customers will be very minimal as stated previously.

Dated this ____ day of February, 2000.

HERSHEY COOPERATIVE TELEPHONE COMPANY, Applicant

By: ______________________________

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on Its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF)	)	Application No. NUSF-7
	)	
	)	Joint Post-Hearing Brief of the HunTel Companies, Arlington Telephone Company, The Blair Telephone Company and Eastern Nebraska Telephone Company

I. Summary of The Waiver Request

A. HunTel Requests a Waiver of the Order Provision Requiring That Support Levels Be Reduced By Local Rate Increase Revenue

The C-1628 order required that, during the transition period, an eligible carrier's ("ECs") support "shall equal the implicit support it has removed through changes in access charges and basic local service rate reductions, less the implicit support obviated through basic local service rate increases."[1] This provision basically means that an EC computes its support by netting the increase in its local service revenues provided by local rate increases against decreases in its access revenues which occur as a result of decreasing intrastate access rates to target levels specified in the C-1628 order.

HunTel requests that this provision requiring the netting of support provided by local rate increases against access rate decreases be waived for its three companies

[1] *See Application of the Nebraska Public Service Commission, on its own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform*, Application No. C-1628, Findings and Conclusions, January 13, 1999, ("C-1628 Order") at 9.

requesting waivers, and that it be allowed to receive support equal to the amount of its access rate decreases.

B. HunTel Requests This Waiver Due to Significant Underearnings

The HunTel companies are experiencing significant underearnings. As illustrated on Arlington's NUSF-EARN form, Column (D) Arlington is earning $240,493 less than the amount necessary to generate a 12 percent rate of return. The corresponding underearnings amount for Blair is $1,159,961 and for Eastern Nebraska is $632,076. Allowing the HunTel companies to receive support equal to their reduction in access revenues would grant them an additional $150,156 in additional support ($14,734 for Arlington, $30,460 for Blair, and $104,962 for Eastern Nebraska). This additional support amounts to just 7.4 percent of the total dollar amount of underearnings.

The HunTel companies are experiencing underearnings despite the fact that they are increasing local rates to target levels within the transition period. Eastern Nebraska's rates were increased to target levels on November 2, 1999. Arlington and Blair will reach target local rate levels on November 2, 2000. HunTel understands that its request to keep its local rate increase revenue and not net it against access reductions will not raise its rate of return to the 12 percent allowed before adjustments are made in support payments.

II. HunTel's Waiver Request is Consistent with Principles Contained in the C-1628 Order and Nebraska Statutes

A. Without Granting Waivers, the C-1628 Order Would Not be Competitively Neutral

The Nebraska Telecommunications Universal Service Fund Act stated that there should be "specific, predictable, and *competitively neutral* mechanisms to preserve and advance universal service" in the state.[2] In order to fulfill this principle, the implementation requirements of the C-1628 Order should not allow companies in a particular situation to gain an advantage over companies that are faced with a different situation as a result of complying with the C-1628 Order. This would be the case if the order were construed to not allow companies to apply for waivers to help offset earning less than a 12 percent rate of return, while companies earning greater than a 12 percent rate of return have their eligible support amounts adjusted so that they earn exactly a 12 percent rate of return.

B. The Inequity of Not Granting Waivers Is Illustrated by HunTel's Situation, in Which One Company is Overearning While Three Companies Are Underearning

The application of the C-1628 Order earning requirements on the HunTel companies is particularly illustrative of the inequities that could be caused by not granting waivers for underearnings. HunTel is a holding company composed of four separate local exchange carriers ("LECs"), which include the Arlington Telephone Company, the Blair Telephone Company, the Eastern Nebraska Telephone Company and the Rock County Telephone Company. Rock County experienced earnings in

[2] *See* Neb. Rev. Stat. §86-1404(5), emphasis added.

excess of a 12 percent rate of return during the test year, and thus will be required to adjust its eligible support downward by $75,319. On the other hand, the combined underearnings of the other three LECs is $2,032,530. Since the four LECs are separate operating companies, the overearnings of Rock County cannot be applied against the underearnings of the other three companies. Therefore, HunTel is seeking this waiver to put its companies on a somewhat more level playing field with regard to earnings following their compliance with the C-1628 order, by seeking to supplement somewhat the underearnings experienced by three of the LECs.

C. The C-1628 Order Does Not Address The Specific Treatment of Underearnings

The C-1628 Order does not address the question of whether any adjustments will be made to support for ECs earning less than a 12 percent rate of return. The order only states that total eligible support will be adjusted for rate of return, which will be calculated as the sum of the carrier's net operating income over the test period divided by the net rate base over the same period.[3] The order does, however, specify the method in which adjustments will be made to eligible support for ECs earning greater than a 12 percent rate of return.[4] There has been no explicit indication from the Nebraska Public Service Commission ("Commission") as to its policy regarding underearning companies, thus leaving filing a waiver as these companies' only option.

[3] *See C-1628 Order* at 8.

[4] *See C-1628 Order* at 6.

While the order is ambiguous on the treatment of underearnings situations, testimony of Mr. Jeff Pursley, Director of the Universal Service Fund, indicates that the intent with regard to implementation is to make it “extremely likely that they will earn a [5] Thus, while the order does not address whether additional support will be granted to companies earning less than a 12 percent rate of return, it is clear that the Director of the Universal Service intended to “make it likely” for companies to earn a 12 percent rate of return if they applied for a waiver, at least for a subset of supported services.

D. The Permanent Methodology Adopted for Non-Rural Carriers Guarantees a Return on a Calculated Rate Base

The C-1628 Order prescribes a permanent methodology (after the transition period) to be followed in determining NUSF support for non-rural carriers. This methodology will determine the costs for supported services by determining the forward looking direct cost of a service, and a reasonable share of the joint and common costs, including a reasonable profit. In the C-1633 Order, the Commission recommended that the FCC adopt the Benchmark Cost Proxy Model (“BCPM”) uncapped version 3.1 to determine federal universal service support for non-rural carrier in Nebraska. The Commission also stated it found this model to be the most appropriate for determining

[5] *See The Commission on Its Own Motion, Seeking to Review and Approve Requests for Modification of the Funding Calculation for the Nebraska Universal Service Fund* (“NUSF”), Application No. NUSF-7, Hearing Transcript, filed January 13, 2000 (“NUSF-7 Transcript”) at 53:4-5.

Nebraska non-rural carrier forward looking costs, and adopted it for this purpose in the C-1628 Order.[6]

The BCPM, as well as other proxy models, develops a hypothetical network to serve customers in a given area, and determines the investment and resulting cost to serve that area. In order to develop the cost, the model includes a cost of capital, or rate of return on investment. Thus, by compensating a carrier based on costs developed using a proxy model, the carrier is guaranteed a rate of return on the amount of investment calculated by the model.

While the permanent methodology adopted for non-rural carrier is not applicable to rural LECs, the inclusion of a specified rate of return in the non-rural carrier's support methodology serves as a precedent. The permanent methodology for non-rural carriers also specifies that after the first year under the permanent mechanism, rate of return adjustments will be made.[7] Thus, the effect of this methodology is to guarantee a non-rural carrier a rate of return, and to reduce its support only if it does not make the necessary investments calculated by the model. It would be inconsistent for the Commission to compensate non-rural companies for USF support with a specified rate of return, while denying rural carriers the same opportunity while under their interim transition plans. Such would be the case, unless the Commission allows the granting of waivers to underearning rural companies such as HunTel.

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[6] *See C-1628 Order* at 7.

[7] *See C-1628 Order* at 8.

III. HunTel's Request is Consistent With the Philosophy of Fund Administration Articulated by the NUSF Director

A. Requests Such as HunTel's Were Anticipated and Planned for in Sizing the NUSF Fund

Testimony presented by Mr. Jeff Pursley, Director of the NUSF, indicates that requests to keep all revenue from local rate increases were one of the considerations that were used in estimating the NUSF funding requirement.[8] Since these requests were anticipated in sizing the fund, they should not have any impact on collections necessary for the fund.

B. The NUSF Director Support the Granting of Waivers to Keep Local Rate Increase Revenues to Help Reduce Customer Confusion

Mr. Pursley, in his May 19, 1999 testimony regarding company requests to not have local rate increases netted against access reductions, said, "Given that companies can file rate increases outside of the transition plan, I believe we should grant these requests and attempt to deal with all local rate increases through the transition plan process to prevent any customer confusion we can."[9] Mr. Pursley further noted that he would take into account the additional revenue when performing each company's over-earnings analysis, thus, he felt "there will be little negative impact to end users" from granting such requests.[10] It is clear from these statements that the NUSF director prefers to keep company requests to supplement underearnings as part of the NUSF

[8] *See Testimony of Jeffrey L Pursley of the Nebraska Public Service Commission*, May 19, 1999, at Q. 15.

[9] Ibid.

[10] Ibid.

waiver process, instead of using other avenues outside of the NUSF process such as local rate increases independent of those contained in company transition plans.

IV. Further Responses to Commission Queries

A. HunTel Believes it Submitted the Proper Dollar Amounts in its Waiver Request Relative to Local Rate Increase Revenue and its Impact on the Funding Computation

The NUSF Director posed a series of questions to Mr. Steve Maun, Vice President of Business Development for HunTel Systems, related to the actual amount of revenue due to local rate increases that were used to offset the access revenue reduction in the calculation of eligible support.[11] HunTel had calculated the revenue due to local rate increases for a 10-month period. This approach was used because HunTel's local rate increases became effective on November 2, 1999 as opposed to the nominal September 1, 1999 date (Note: the access reductions did become effective on September 1, 1999 and therefore a full 12-month period was used for the access revenue calculation). The NUSF Director, in his questioning, suggested that the local revenue calculation should be based on a 12-month period due to the fact that these amounts will be paid on an ongoing basis. It appears that the Director was concerned about the cumulative aspect of the eligible support calculation in subsequent years of the fund.

On the issue of the proper revenue amount to be used to represent the adjustment to the 1999 support level being requested by HunTel, the companies

[11] *See The Commission on Its Own Motion, Seeking to Review and Approve Requests for Modification of the Funding Calculation for the Nebraska Univeral Service Fund* ("NUSF"), Application No. NUSF-7, Hearing Transcript, filed January 13, 2000 ("NUSF-7 Transcript") at 97.

suggest that the critical point is that HunTel requests that the total support level, if the request is granted, should be equal to the lost revenue associated with the 1999 access rate reductions. This would be $14,734 for Arlington, $315,721 for Blair, and $116,871 for Eastern Nebraska. To the Director's point related to the cumulative aspect of the eligible support calculation in subsequent years of the fund, HunTel suggests that because in the first year the rate local rate increase was delayed for 2 months, the contribution of the first year's local revenue increase to the second year's eligible support level should be computed on a 12-month basis and the contribution of the second year's local rate increase to the second year's eligible support level should be computed on a 10-month basis. This approach would account for the unique situation associated with the Nov. 2 local rate increases planned by HunTel throughout the transition period.

B. HunTel's Assertion That the 12 Percent Rate of Return Test for NUSF Funding Serves as a "Cap" on Earnings is Supported by the NUSF Director

Mr. Michael Loeffler, counsel for the Commission, queried Mr. Maun as to his characterization of the 12 percent threshold figure on earnings for receiving USF funding as a "cap".[12] HunTel would like to expand upon Mr. Maun's testimony in a attempt to clarify its position by adding that if a company is overearning there is an adjustment to eligible support "downward" and if a company is underearning there is not an "upward" adjustment to eligible support. There appears to be a lack of mechanical symmetry and therefore a lack of regulatory symmetry in this approach.

[12] *See NUSF-7 Transcript* at 69.

Mr. Maun's characterization of the earnings threshold for receiving USF funding as a "cap" is borne out by testimony presented by the NUSF Director. In discussing whether companies should receive support in addition to not netting local rate increases against access reductions, the NUSF Director said, "I feel it is important to recognize that we have capped two major sources of revenue, local and access services".[13] Thus, it appears the NUSF Director views participation in the NUSF and meeting its requirements as a "cap" on local and access service earnings.

V. Conclusion

HunTel is requesting that it be allowed to keep its local rate increase revenue, and not net it against decreases in access revenue that occurred as a result of access rate reductions. HunTel is making this request because its companies are significantly underearning. Allowing HunTel to keep all revenues from its local rate increases would only amount to 7.4 percent of the total dollar amount of its underearnings. HunTel understands that even with the granting of this waiver request it will be earning less than a 12 percent rate of return.

HunTel believes its request is consistent with principles contained in the C-1628 Order and Nebraska statutes. HunTel's request also fits with the NUSF Director's philosophy for administering local rate increase requests, which is to allow for waivers to keep local rate increase revenues instead of necessitating local rate increases in addition to those contained in the transition plans.

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[13] *See Testimony of Jeffrey L. Pursley*, May 19, 1999, at Q. 15.

Granting HunTel's request would increase the funding requirement by $150,156. This would be a one-time adjustment for the 1999 fund year. There would be no impact on fund collections as a result of this request.

Dated this ____ day of February, 2000.

ARLINGTON TELEPHONE COMPANY,
THE BLAIR TELEPHONE COMPANY,
and EASTERN NEBRASKA TELEPHONE
COMPANY, Applicants

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on Its own motion, seeking to review and approve requests for modification of the funding calculation for the Nebraska Universal Service Fund (NUSF)	) Application No. NUSF-7))) Post-Hearing Brief of) Stanton Telecom, Inc.

I. Summary of The Waiver Request

A. Stanton Requests a Decrease in its Overearnings Adjustment for a "Known and Measurable" Adjustment

The C-1628 Order specifies that total eligible support amounts will be adjusted for rate-of-return.[1] For eligible carriers ("ECs") earning a rate of return greater than 12 percent over the test period, the actual support will be the total eligible support less the reduction in revenue required to lower the rate of return over the test period to 12 percent.[2]

On March 9, 1999, the Nebraska Public Service Commission ("Commission") issued an order directing incumbent local exchange carriers ("ILECs) to file transition plans. The instructions which were issued later allowed companies to identify other adjustments in Column (C) of the NUSF-EARN form.[3] This column allowed for companies "to make adjustments for significant known and measurable events that will occur over the support period and are not adequately reflected in the base period."

[1] *See the Application of the Nebraska Public Service Commission, on its Own Motion, Seeking to Conduct an Investigation into Intrastate Access Charge Reform,* Application No. C-1628, Findings and Conclusions, January13, 1999 ("C-1628 Order") at 8.

[2] Ibid.

[3] *See* Memorandum to All Incumbent Local Exchange Carrier in the State of Nebraska from Jeffrey L. Pursley, Director, Nebraska Universal Service Fund, RE: Company C-1628 Transition Plans, March 23, 1999.

Companies including amounts in this column were to file a waiver request stating why such adjustments should be allowed and supporting the calculated adjustments. Stanton filed a waiver request to comply with this requirement on April 30, 1999.

B. Stanton Requests This Waiver Due to a Change in Its Access Minute Measurement Due to IntraLATA Dialing Parity Implementation

Stanton requests this waiver due to a "known and measurable" change in its test year data, which was caused by operational changes due to the implementation of intrastate dialing parity. Prior to its conversion to intraLATA dialing parity on November 14, 1998, Stanton utilized a terminating-to-originating ratio to determine terminating intraLATA access minutes for billing purposes. However, with the conversion to intraLATA dialing parity, U S West indicated that it wished to be billed for actual terminating minutes and would no longer support payment of terminating access based on terminating-to-originating ratios.

Stanton adjusted the amount of intraLATA terminating access minutes billed to U S West downward to reflect the difference between the amount of terminating minutes determined using the terminating-to-originating ratio and the amount of actual terminating minutes billed. The adjustment was about a five percent reduction in access minutes, based on the difference between the terminating minutes that would have been billed under the two methods over the period of February 1999. This reduction in access minutes resulted in a $29,736 reduction in intrastate access revenues.

Stanton is submitting the $29,736 reduction in Column (C) as an "Other

-EARN form to offset the network access revenues it had previously reported and thus reduce its overearnings adjustment as shown in Column (D) of the NUSF-EARN form. This adjustment changes the test year data to reflect the method of billing terminating access and the amounts resulting from that method that were used in 1999 but were not yet in place during the test year period (1998). This adjustment is a "known and measurable" change that is supported by Commission rules regarding rate changes, as discussed following.

II. Stanton's Waiver Request is Consistent with Commission Rules Regarding "Known and Measurable" Adjustments

A. Commission Rules Clarify Situations In Which "Known and Measurable" Adjustments are Appropriate

The Commission's rules for the use and construction of "known and measurable" adjustments are contained in Sections 002.29A1a through 002.29A1d of the Commission's Telecommunications Rules and Regulations. A brief restatement of the rules and the reasons why the adjustment complies with these rules follows.

Section 002.29A1a specifies that adjustments "must be based on data submitted for a recently concluded test year" and that the data must "be subject to correction or verification during the course of the proceeding." The adjustment meets both of these criteria in that the data was for a recently concluded test year (1998) and the data is being examined in a proceeding which is currently open.

Section 002.29A1b says that "adjustments will be made to test year data to reflect changes" which occur "but (are) not reflected in test year data, known and measurable changes in costs occurring within a reasonable time subsequent to the test year." The adjustment meets these requirements in that the use of actual terminating access minutes for billing purposes instead of minutes generated using a terminating-to-originating ratio is a change that is not reflected in test year data because the practice was instituted in the year following the test year (1999), which is within a reasonable time subsequent to the test year. The adjustment is "known and measurable" in that a ratio was developed to measure the change between the access minutes that were billed using the terminating-to-originating ratio and the actual terminating access minutes.

Section 002.29A1c states that "Adjustments will also be made to eliminate the effects of abnormal or unrepresentative conditions reflected in test year data." The adjustment is consistent with this criterion in that the billing of access minutes using a terminating-to-originating ratio (which was reflected in the test year data) was unrepresentative of the method that will be used on a going-forward basis, which is the use of actual terminating minutes.

Section 002.29A1d says that adjustment for changes "will not be made unless either the changes are subject to definite computation or reasonable estimation," or the adjustment "is dictated by overriding considerations of public policy and should be allowed despite difficulties in estimations." The adjustment meets the first part of the requirement in that it was based on a computation of the difference between access minutes billed using the terminating-to-originating ratio versus actual terminating access minutes over the period of February 1999. The adjustment further meets the requirement in that it was due to changes in business practices resulting from the implementation of a public policy (intraLATA dialing parity) .

B. The Record Indicates That the Request Qualifies as a "Known and

The hearing record indicates that Stanton's waiver request meets the requirements for a "known and measurable" adjustment. Mr. Jeff Pursley, Director of the Universal Service Fund, asked Mr. Wendel Aanerud, a witness representing Stanton, the following about the waiver request ". . . is similar, and just basically identical to the request of Cambridge. Is that correct?"[4] Mr. Aanerud's response was "Yes, it is."[5]

In a summation of Cambridge's waiver request, Mr. Pursley said "And, basically, the problem if I can restate it is that we determined the access reductions. We froze demand in terms of 1998 - - it was 1998 demand."[6] Mr. Pursley completes the summation by asking a question of Mr. Roger Hoffman, Executive Vice President of the Cambridge Telephone Company:[7]

MR. PURSLEY: So, as a result, the 1998 demand is not reflective of the adjustments that are required by implementing that. Is that correct?

MR. HOFFMAN: That is correct.

Thus, the record is clear that the test year demand is not reflective of changes in

[4] *See The Commission on Its Own Motion, Seeking to Review and Approve Requests for Modification of the Funding Calculation for the Nebraska Universal Service Fund* ("NUSF"), Application No. NUSF-7, Hearing Transcript, filed January 13, 2000 ("NUSF-7 Transcript") at 141:4-6.

[5] *See NUSF-7 Transcript* at 141:7.

[6] *See NUSF-7 Transcript* at 105:14-17.

[7] *See NUSF-7 Transcript* at 105:21-24.

the measurement of terminating access minutes, and a "known and measu adjustment is necessary to reflect these changes.

III. The Impact of Granting Stanton's Waiver Request is Minimal and the Request is Reasonable

The impact of granting the waiver request is minimal. Granting the application would result in an increase in the funding requirement of $29,736, by reducing Stanton's overearning adjustment by a like amount. There would be no impact on collections for the fund.

The request is reasonable, in that it accounts for changes that have occurred since the test period which are now "known and measurable." This is a one-time adjustment for the 1999 fund year.

IV. Conclusion

Stanton is requesting that it be allowed to make a "known and measurable" adjustment to its overearnings adjustment, to reflect a change in the billing of terminating access minutes requested by U S West as a result of intraLATA dialing parity implementation. Stanton is now billing terminating access minutes to U S West on an actual basis, Stanton had previously billed terminating access minutes based on a terminating-to-originating ratio. This change resulted in about a five percent decrease in total access minutes billed, or a $29,736 decrease in revenues.

Granting Stanton's request would increase the funding requirement by $29,736. This would be a one-time adjustment for the 1999 fund year. There would be no impact on fund collections as a result of this request. Stanton believes that the Commission should find this request fair and reasonable.

Dated this ____ day of February, 2000.

STANTON TELECOM, INC., Applicant

By: ________________________________

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to review and approve requests for modification of the funding calculation of the Nebraska Universal Service Fund (NUSF)	)	Application No. NUSF-7 Post-Hearing Brief of Three River Telco

Three River Telco (Three River) files this Brief in support of its waiver request in Nebraska Public Service Commission (Commission) Order C-1628. Three River Telco filed its Transition Plan on April 30, 1999, in compliance with the Commission's Findings and Conclusions in C-1628, entered on January 13, 1999. An application for a waiver of certain C-1628 requirements was included in this Transition Plan. At the December 9, 1999, hearing in this matter, Mr. Neil Classen, General Manager of Three River Telco, testified in support of Three River's waiver request that Three River be allowed to keep the revenue generated from its local service rate increase for the first year of the plan.

In its January 13 order in docket C-1628, the Commission set 12% as the local exchange carriers' (LECs') rate-of-return (ROR) target level for determining universal service funding. Three River's Transition Plan shows that it is earning significantly below this targeted level. Three River asks that it be allowed to keep the revenue from its local service increase to partially offset its under-earnings.

Pursuant to the Commission's Findings and Conclusions in C-1628, Three River Telco has lowered its access rates and has agreed to make the necessary adjustments to meet local service rate targets. Access rates were lowered by 7 cents a minute effective September 1, 1999, decreasing Three River's access revenues by $309,018 annually. Local service rates were increased September 1, 1999, by 30% to $15.20 for residence service and $17.20 for business service. Residential rates will reach the C-1628 target level on September 1, 2000, and business rates will reach the target on September 1, 2001. (Classen, Tr. at 142)

In the past two years, Three River Telco has made major investments in its plant and operations. In addition to installing a new switch, Three River has installed new digital facilities in several locations, installed a new Internet router and completed some significant service improvement projects. (Classen, Tr. At 144) These investments are partly responsible for Three River's low rate-of-return. Without the revenues that will result from granting its waiver request, Three River will find it more difficult to make service improvements and it will have less incentive to do so. Maintaining its ability to continue to provide quality service to its customers is the reason Three River is seeking this waiver.

Without granting the waivers, like the one Three River is requesting, the C-1628 order has the unintended consequence of allowing over-earning LECs to still earn at 12%, while under-earning LECs have no recourse to earn at this level. Granting Three River's waiver request, in part, addresses this unintended inequity. The C-1628 order is ambiguous on the treatment of under-earning LECs; therefore, there is no explicit requirement in the order for the Commission to disallow such a request. In fact, given the Commission's resolution of the permanent universal service funding for non-rural companies -- which, in effect, guarantees a return on some rate base -- it is reasonable to conclude that the Commission envisioned a similar resolution for rural companies.

According to the May 19, 1999, testimony of Nebraska Universal Service Fund (NUSF) Director Jeff Pursley, Three River Telco's waiver request has been factored into the NUSF forecast. (Pursley testimony at Question 15) Director Pursley also testified that he believes that the Commission should grant requests like these and deal with all local rate increases through the transition plan process to minimize customer confusion. (Ibid.) Three River Telco agrees and posits that local rate increases beyond C-1628 target levels for small companies like itself would not maintain rural-urban rate comparability. It is not reasonable to address under-earnings through local rate increases beyond the C-1628 target rates.

Granting Three River Telco's waiver request will have minimal impact on the NUSF. Three River currently receives $254,876 from the fund. Granting its waiver request would result in $54,142 in additional universal service support, bringing its total draw to $309,018. Allowing Three River to keep the revenue from its local rate increase will have no impact on the collection of NUSF surcharges from Three River's customers.

Commissioners' questions at the December 9 hearing indicate that perhaps Three River's request was perceived as a known and measurable adjustment due to a planned investment program. This is not the case. The adjustment reflected on Form NUSF-EARN is a revenue entry showing the impact of keeping the local rate increase revenue. Three River Telco's waiver affects the calculation of eligible support, not the adjustment to eligible support from the earnings calculation on NUSF-EARN.

Three River understands that even with the granting of this waiver request it will still be earning under the targeted 12% ROR. Three River Telco believes that its waiver request is fair and reasonable.

Three River Telco appreciates the opportunity to present this Brief supporting its waiver request and thanks the Commission for its consideration.

Dated this ____ day of February, 2000.

THREE RIVER TELCO, Applicant

By: ______________________________

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